

REMARKS

The Applicant respectfully requests reconsideration of this application as amended. No claims have been amended. No claims have been cancelled or added. Therefore, claims 1-15 are present for examination.

35 U.S.C. § 102 REJECTIONS

In the Office action, the Examiner rejected claims 1, 2, and 6 – 15 under 35 U.S.C. § 102(e) as being unpatentable over Randic (U.S. Patent No. 6,275,797). Applicant traverses these rejections.

Rejection of Claims 1, 2, and 6 – 15 under 35 U.S.C. § 102(e)

The manner in which the Office has evaluated independent claims 1, 10, 13, 14 and 15 ignores the “as a whole” requirement and fails to consider every claim limitation in each of the claims. According to the MPEP, Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim *as a whole* must be considered. See, e.g., *Diamond v. Diehr*, 450 U.S. 188-89 (1981). In addition, when evaluating the scope of a claim, every limitation in the claim must be considered. See, e.g., *In re Wilson*, 424 F.2d 1382, 1385, (CCPA 1970) (“*All words* in a claim must be considered in judging the patentability of that claim against the prior art.” (emphasis added)). With respect to at least the claimed elements “answering a test call...by playing a voice file”, the Office’s rejection fails to consider all the words of claims 1, 10, 13, 14 and 15, respectively, and improperly dissects the claims.

For example, claim 1 recites, *inter alia*, “enabling a communications device connected to the VOIP network to answer a test call received over the VOIP network by playing a voice file.” Claim 10 recites, *inter alia*, “enabling communications devices connected to the VOIP network to answer test calls received over the VOIP network by playing embedded voice files.” Claim 13 recites, *inter alia*, “enable a communications device connected to the VOIP network to answer a test call received over the VOIP network by playing a voice file.” Claim 15 recites, *inter alia*, “a step for answering the test call by playing a voice file with the communications device.”

Randic's system transmits a voice test file from a sending computer to a receiving computer at the other end of a voice path. *See Randic, Abstract*. Upon receipt of packets in the transmitted voice test file, an automatic voice recognition system (AVR) at the receiving computer processes the packets by comparing speech patterns in the packets with speech patterns in a voice file previously stored at the receiving computer. *Id.*, col. 3, ll. 50 – 61. Randic does not disclose **answering a test call by playing a voice file**. At best, Randic discloses receiving and processing packets in a voice test file by a receiving computer in response to a sending computer transmitting the voice test file packets to the receiving computer.

With particular regard to claims 8, 10, and 14 these claims include additional limitations not shown or suggested by Randic. Claim 8 recites, *inter alia*, **“using the test probe that placed the test call to measure the voice call listening quality.”** Claim 10 recites, *inter alia*, **“a single test probe to generate test calls...to a communications device; and using the test probe to measure** the voice call listening quality from the embedded voice files played by the communication devices.” Claim 14 recites, *inter alia*, “a test probe coupled to the VOIP network, the test probe configured to **test voice call listening quality** in the VOIP network by **generating one or more test calls** to each of the plurality of VOIP gateways, recording the embedded **voice files played by each of the plurality of VOIP gateways, and measuring voice listening quality** of the one or more test calls by comparing the recorded embedded voice files to the reference voice file stored within the test probe.” Thus, the test probe generates a test call **and** is used to measure voice call quality of voice files played by another device.

According to the Office action, Randic “discloses that the sending computer 12 generates test calls to a plurality of communication devices (receiving computers 14, 16, 18 in Fig. 1). The embedded voice files played by the receiving computers are voice test files 23 in the receiving computer.” Even assuming the assertion were true, which Applicant denies, Randic goes on to say that “[t]he AVR system 24 [included in computers 14, 16, and 18] compares the speech patterns in the transmitted voice test files 17A, 17B, and 17C with speech patterns of the voice test file 23” and generates voice path quality factors 27A, 27B, and 27C. *Randic*, col. 3, ll. 50 – 60. As such, Randic requires that the **receiving computers** 14, 16, and 18 perform Randic's quality comparison. Clearly Randic does not envision or reasonably suggest a test probe that both generates a test call to a communications device, and is used to measure voice call quality based on a voice file that is played by the communications device that answers the test call.

For at least the foregoing reasons, independent claims 1, 10, 13, 14 and 15 are allowable. Claims 2 and 6 – 9 depend from claim 1 and are therefore believed to be allowable for at least the same reasons as claim 1. Claims 11 – 12 depend from claim 10 and are therefore believed to be allowable for at least the same reasons as claim 10.

35 U.S.C. § 103 REJECTIONS

In the Office action, the Examiner rejected claims 3 – 5 under 35 U.S.C. § 103(a) as being unpatentable over Randic in view Tomberlin (U.S. Patent No. 6,834,040). Applicant traverses these rejections.

Rejection of Claims 3 – 5 under 35 U.S.C. § 103(a)

The Office acknowledges, and the Applicant agrees, that Randic does not teach a perceptual test model such as PSQM or PAMS. However, the Office asserts that Tomberlin makes up for Randic's deficiencies. Applicant traverses this assertion for at least the reason that the combination of Tomberlin and Randic would render Randic unsatisfactory for its intended purpose and would change the principle of operation of Randic.

Randic describes a very specific method to determine voice quality, which is incompatible with PSQM. Specifically, Randic teaches "determining the number of matching letters, words, or sentences between transmitted voice file 17 and stored voice test file 23" to generate a voice path quality factor. *Randic*, col. 6, ll. 13 – 19. For example, first the AVR of Randic performs voice recognition to determine the phrases "This is a test" and "This is a beach". *Id.*, col. 6, ll. 30 – 35. Then the AVR determines that there are 3 matching words between the phrases, and generates a voice path quality factor of 3. *Id.*

By contrast, PAMS and PSQM are based on a perceptual model that takes into account what is perceptually important to a human listener. *Application*, p. 3, ll. 1 – 18. According to Tomberlin, two voice signals being compared with PAMS and PSQM must be "correlated in time" to obtain a meaningful measurement. *Tomberlin*, col. 3, ll. 5 – 10. The Office therefore appears to be suggesting that Randic's automatic voice recognition (AVR) step be replaced by a very different quality measurement process of signal time correlation. However, to do so would be to completely ignore the fundamental and requisite aspect of Randic's system of voice recognition.

Accordingly, Tomberlin teaches away from the combination of Tomberlin and Randic for at least the reason that Randic requires a particular method of determining voice quality that is neither taught nor suggested by Tomberlin. The Office appears to have based its apparent motivation to combine Tomberlin and Randic on hindsight, using the Applicant's own Application. As such, the Office has not set forth a prima facie case of obviousness.

For at least these reasons, claims 3 – 5 are believed to be allowable. In addition, claims 3 – 5 depend from claim 1, and are therefore believed to be allowable for the same reasons given above for claim 1.

CONCLUSION

The Applicant respectfully submits that the rejections have been overcome by the amendment and remarks, and that the remaining pending claims are in condition for allowance. Accordingly, the Applicant respectfully requests that the rejections be withdrawn and that a Notice of Allowance be issued for claims 1-15.

INVITATION FOR A TELEPHONE INTERVIEW

The Examiner is requested to call the undersigned at (303) 447-7739 if there remains any issue with allowance of the case.

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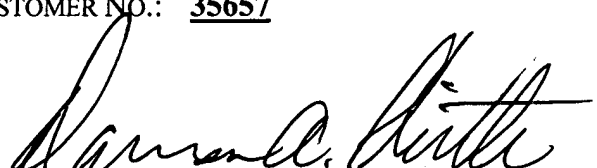
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Respectfully submitted,

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